

REMARKS

Reconsideration and further examination of the application are requested. All rejections and objections are respectfully traversed.

Obviousness-Type Double Patenting Rejection

In the Office Action, claims 1-8 were finally rejected under the judicially created doctrine of obviousness-type double patenting based on the parent to this continuation application, which issued as U.S. Patent No. 6,647,453. The Office Action notes that a timely filed Terminal Disclaimer will overcome this rejection. Claims 1-8 were found to be allowable over the art of record.

Applicant encloses a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(c). Accordingly, the rejection of claims 1-8 should be withdrawn.

The Issuance Of The *Final* Office Action Was Improper As It Is The First Action Issued In This Application

Applicant notes that, although this is the **first** Office Action issued in this continuation application, it was designated as a FINAL office action on the *Office Action Summary* sheet. Pursuant to 37 C.F.R. §1.113(a), however, an examiner's action can only be designated as a FINAL action if it is the second or a subsequent action. Because the present Office Action represents the first action issued in this case, applicant respectfully requests that it be re-designated as a non-final action.

Applicant further notes that, while claims 1-20 are actually pending in this application, the Office Action only addressed claims 1-8. More specifically, pursuant to the Preliminary Amendment filed July 21, 2003, applicants presented claims 1-20 for exami-

nation. In any event, applicant notes that claims 9-20 depend from claims found by the Examiner to be allowable except for the obviousness-type double patenting issue, which has been resolved by virtue of the enclosed Terminal Disclaimer.

Applicant submits that the application is in condition for allowance and early favorable action is requested.

Respectfully submitted,



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